

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**DAMIEAN A. ERICKSON,
APPELLANT
vs.**

**STATE OF MISSOURI,
RESPONDENT**

DOCKET NUMBER WD73562

DATE: MARCH 27, 2012

Appeal from:

The Circuit Court of Buchanan County, Missouri
The Honorable Daniel F. Kellogg, Judge

Appellate Judges:

Division Three: James M. Smart, Jr., P.J., Victor C. Howard and James E. Welsh, JJ.

Attorneys:

Susan E. Summers, for Appellant

Dora A. Fichter, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAMIEAN A. ERICKSON, APPELLANT

v.

STATE OF MISSOURI, RESPONDENT

WD73562

Buchanan County, Missouri

Before Division Three: James M. Smart, Jr., P.J., Victor C. Howard and James E. Welsh, JJ.

Damiean Erickson appeals the judgment of the motion court denying his Rule 24.035 motion for postconviction relief following an evidentiary hearing. He sought to vacate his ten-year sentence on his conviction for class C felony possession of a controlled substance. He argues that his sentence exceeded the maximum authorized by law and that his counsel was ineffective in failing to object to the sentence.

AFFIRMED.

(1) Where the State filed an amended information on the day of sentencing alleging that Erickson was a prior and persistent offender in that he had been convicted of two prior felonies committed at different times, evidence of the two prior felonies was adduced through Erickson's testimony at the sentencing hearing but prior to the court imposing the sentence, and the court found Erickson to be a prior and persistent offender, the mandated procedures of section 558.021.1 were followed, and Erickson was properly sentenced as a prior and persistent offender.

(2) Because Erickson's claim that his sentence exceeded the maximum authorized by law is meritless, plea counsel was not ineffective in failing to object to the sentence.

Opinion by: Victor C. Howard, Judge

Date: March 27, 2012

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